

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2014/0339

IN THE MATTER OF SECTION 84 (8), 89 & 101 OF THE CONSTITUTION OF
GRENADA, SCHEDULE 1 TO THE GRENADA CONSTITUTION ORDER 1973,
CHAPTER 128A OF THE CONTINUOUS REVISED LAWS OF GRENADA

AND

IN THE MATTER OF THE SUPREME COURT (CONSTITUTIONAL REDRESS-
GRENADA) RULES 1968, SRO NO. 41 OF 1968, CHAPTER 336 OF THE
CONTINUOUS REVISED LAWS OF GRENADA

AND

IN THE MATTER OF THE PUBLIC SERVICE COMMISSION REGULATION 1969, SRO
NO. 27 OF 1969, CHAPTER 128A OF THE CONTINUOUS REVISED LAWS OF
GRENADA

AND

FOR RELIEF PURSUANT TO SECTION 84 (8) OF THE SAID CONSTITUTION OF
GRENADA

BETWEEN:

WILLAN THOMPSON

Applicant/Claimant

and

**THE ATTORNEY GENERAL OF GRENADA
THE PUBLIC SERVICE COMMISSION**

Respondents/Defendants

Appearances:

Mr. Rohan Phillip for the Applicant/Claimant
Mr. Dwight Horsford with Mrs. Camille Gooding De Souza for the
Respondents/Defendants

2014: October 2

REASONS IN ORAL RULING

- [1] **MOHAMMED, J.:** On the 30th September 2011 Willan Thompson ("the Applicant") was appointed to act in the position of Commissioner of Police ("COP") of the Royal Grenada Police Force ("the RGPF") with effect from 8th October 2011. On the 30th January 2012 the Applicant's appointment was confirmed with effect from 8th October 2011. Subsequently, the Applicant applied for and obtained permission to proceed on vacation leave from 3rd March 2013 to 15th November 2013 and thereafter from 15th May 2014 to Friday 4th July 2014. On the morning of Monday, 7th July 2014 he attended at the Police Headquarters at Fort George where he was informed by the Acting COP, Winston James that he was in receipt of a letter from the Second Respondent, the Public Service Commission ("the PSC"), transferring him to Parliament as of that day, 7th July 2014, and he then proceeded to hand him a sealed envelope from the office of the PSC addressed to him in his private capacity and not as a public officer, as is customary in the public service of Grenada.
- [2] The Applicant left Police Headquarters and attended at the Office of the Clerk, Office of Houses of Parliament, and met with Raphael Donald, the retiring Clerk of Parliament. Since then he has been reporting to the Office of Clerk of Parliament, Office of Houses of Parliament, and has been performing the task required of him. He stated that he complied with the contents of the PSC's letter because he feared that if he did not report for work he may have been deemed to have abandoned his office in the Public Service of Grenada.
- [3] However, the Applicant was not satisfied with his purported transfer to the office of the Clerk of Parliament, Office of Houses of Parliament, and as such on the 18th July 2014 he instituted an action in the form of a constitutional motion against the

AG and the PSC seeking five declarations and damages. The declaratory reliefs he seeks are:

- (a) that the RGPF is a closed department within the Public Service of Grenada and as such a police officer cannot unilaterally be transferred to a post outside the RGPF without the consent or permission of the said officer;
- (b) that the decision by the PSC to approve the Applicant's transfer to the Office of Clerk of Parliament, Office of Houses of Parliament was irrational, unreasonable and/or arbitrary and or in breach of natural justice and was contrary to or in contravention of section 89(1) of the Constitution of Grenada and therefore null and void;
- (c) that the decision of the PSC to transfer the Applicant to the office of Clerk of Parliament, Office of Houses of Parliament and the circumstances leading up to was in reality a termination of the Claimant's appointment as COP;
- (d) that the Office of Clerk of Parliament, Office of the Houses of Parliament is not an office or post in the Public Service of Grenada of an equivalent status to that of the COP to which the Applicant may be transferred as contemplated by Regulation 46 (6) of the PSC regulations, 1969;
- (e) the Applicant having been required to retire is entitled to be paid his salary, allowances and benefits up to the compulsory retirement age,
- (f) his pension and retiring benefits as if he had attained the compulsory age of retirement as guaranteed by section 84(4) of the Constitution of Grenada.
- (g) As an alternative to this latter relief the Applicant seeks a declaration that he has been and remains in the Office of COP and is entitled to all the emoluments and benefits attached to the office.

[4] Simultaneous with the filing of the substantive action, the Applicant also applied for interim relief ("the application") namely: for a stay of the decision of the PSC to transfer him to the Office of Clerk of Parliament, Office of Houses of Parliament until the hearing of the substantive application. He also seeks an order that he has

been and remains in the Office of COP and is entitled to all of the emoluments and benefits attached to that position.

- [5] The grounds for the Applicant's interim relief are: the decision of the PSC to transfer him definitively to the Office of Clerk of Parliament, Office of Houses of Parliament with effect from 7th July 2014 was contrary to section 89 (1) of the Constitution of Grenada; the Applicant is the Head of the RGPF which is a special or closed department in the Public Service and therefore cannot be unilaterally be transferred to a post outside the RGPF without his consent; he was denied due process in the purported transfer since he had no discussions with anyone about his removal nor was he given an opportunity to be heard; the decision to transfer him amounted to a termination from his post as COP; the Office of Clerk of Parliament, Office of Houses of Parliament is not of an equivalent status to that of COP to which the Applicant may be transferred as contemplated by regulation 46 of the Public Service Commission Regulations 1969; and the Applicant fears that without the interim relief he may be prejudiced in that he may be constrained to accept the transfer and deemed to have acquiesced to the illegal transfer or alternatively not attend work and be deemed to have abandoned his office.
- [6] Counsel for the Applicant also submitted that the purpose of the application for interim relief is to maintain the status quo at the filing of the substantive claim if the Applicant is eventually successful since the Applicant fears that if he is successful and the post of COP is filled in the interim there would be no post for him to return to.
- [7] The Respondents did not file any affidavit in opposition to the application for interim reliefs. Counsel for the Respondents opposed the application on two grounds; firstly, that the application was in substance a mandatory injunction and not an application for a stay, and secondly, the reliefs being sought in the application are also in the substantive claim and if the interim relief is granted it would effectively have disposed of the substantive claim.

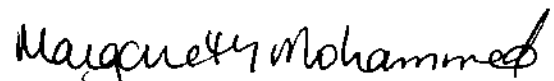
[8] Neither Counsel submitted on the appropriate test in law the Court must address its mind to in determining whether the interim relief sought should be granted. In my view, the stay of execution applied for in the application is no different in substance to an injunction since both in essence seek to stop the effect of the PSC's decision from taking effect. In ***Belize Alliance of Conservation Non-Governmental Organizations v The Department of the Environment and Anor*** [2003] UKPC 63, Lord Walker of Gestingthorpe considered the availability of injunctions in public law cases, and appropriated the ***American Cyanamid*** factors, taking account of the "special factors" in a public law case. The factors in ***American Cyanamid*** are well known: the Applicant must establish that there is a serious issue to be tried, damages is not an adequate remedy, that the justice of the case lies in favour of the interim order being made in his favour and that any special factors lies in favour of the order being granted. In my view, it comes down to where the justice of the case lies. In this regard, I have decided to refuse the application for the following reasons:

- (a) Merits of the Applicant's substantive claim. The Applicant has grounded his action as a constitutional motion. However, the substance of the Applicant's grievance as set out in his affidavit in support appears to be grievances with the body which made the decision, the procedures adopted and the manner of the exercise of the discretion by the PSC. I appreciate in the modern era there has been a great degree of fluidity in the vehicle an aggrieved party uses in approaching the Court in public law matters. While I make no finding at this stage on the appropriateness of the vehicle used by the Applicant, I harbour doubt on the strength of the Applicant's case given the evidence filed and the relief sought. In my view, there are hurdles for the Applicant to overcome, which he may still do, but in such circumstances, where such doubt exists which goes to the merits of the Applicant's claim, it is difficult to grant the interim relief sought.
- (b) Status quo. The status quo at the time of the filing of the application is there is an acting COP and the Applicant is at the Office of the Clerk of Parliament offices at Houses of Parliament. In my view, the Applicant's position there will be determined by the Court since he filed the substantive action.

- (c) Prejudice. The orders which the Applicant has applied for which impact on him directly are with respect to his emoluments, other benefits, his pension, retiring benefits and his lost of status as the COP of the RGPF. He has also asked for damages. In my view, once the Applicant is successful, such relief sought including the loss of status can be reduced to a monetary sum, which is not novel to the Courts.
- (d) Effect of interim relief on substantive relief. The second relief in the application, which is the request for an order that the Applicant has been and remains in the office of the COP and is entitled to all of the emoluments and benefits, is the same as one of the reliefs sought in the substantive claim. In my view, to grant this interim relief at this stage would be premature since the Respondents' position is not before the Court and it may have an impact on the outcome of the substantive relief.
- (e) Special factors-third party interest. A third party, namely the RGPF, would be impacted if the stay is granted since the Applicant would be allowed to resume duties in his substantive post as head of the RGPF. In my view, the RGPF performs an important function since it is responsible for law enforcement in Grenada and to allow the Applicant at this interim stay to resume duties may be detrimental to the organization in circumstances where the substantive matter is still pending.

[9] The Applicant to pay the Respondents the costs of the application. I will hear the parties on costs.

[10] By consent costs agreed in the sum of \$750.00.


Margaret Y Mohammed
High Court Judge